



April 10, 2009

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# ENGROSSED

## HOUSE BILL No. 1271

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DIGEST OF HB 1271 (Updated April 7, 2009 11:39 am - DI 106)

**Citations Affected:** IC 6-2.5; IC 24-4.

**Synopsis:** Consignment of art. Provides that if an artist delivers a work of art with a value of at least \$50 to an art dealer for exhibition or sale on commission, the work of art is considered to be for sale on consignment unless the artist is paid in full upon delivery of the work of art. Provides that the work of art and the proceeds due the artist from the sale of the work of art are property held in trust for the artist by the art dealer and are not subject to seizure or encumbrance by a creditor of the art dealer. Specifies that these provisions may not be waived and that any part of a contract purporting to waive one of these provisions is void. Requires that a contract between an art dealer and an artist specify: (1) the value of the work of art; (2) the minimum price for which the work of art may be sold; (3) any discounts that the art dealer may apply in selling the work of art; (4) the art dealer's commission; and (5) in the event of a sale, the amount of time the art dealer has to pay the artist. Requires a retail merchant that is a consignee to collect and remit the state gross retail tax on the gross retail income received in a consignment sale. Requires the retail merchant to provide a consignor customer an invoice that shows that the state gross retail tax was paid to the consignee retail merchant with a clear notation on the invoice that the item was a consignment sale by the retail merchant on behalf of the seller to the purchaser.

**Effective:** July 1, 2009.

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### Pelath

(SENATE SPONSORS — BUCK, LUBBERS, SIMPSON)

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January 13, 2009, read first time and referred to Committee on Small Business and Economic Development.

January 22, 2009, reported — Do Pass.

January 26, 2009, read second time, ordered engrossed. Engrossed.

January 27, 2009, read third time, passed. Yeas 97, nays 0.

#### SENATE ACTION

February 19, 2009, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

April 9, 2009, amended, reported favorably — Do Pass.

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EH 1271—LS 6353/DI 44+



April 10, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1271

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A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 6-2.5-6-17 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2009]: **Sec. 17. (a) A retail merchant that is a consignee in a retail**  
4 **transaction shall collect and remit the state gross retail tax on the**  
5 **gross retail income received in a consignment sale.**

6 **(b) The retail merchant shall provide the consignor purchaser**  
7 **an invoice that shows that the state gross retail tax was paid to the**  
8 **retail merchant with a clear notation on the invoice that the item**  
9 **was a consignment sale by the retail merchant on behalf of (insert**  
10 **the name of the seller) to (insert the name of the purchaser).**

11 SECTION 2. IC 24-4-17 IS ADDED TO THE INDIANA CODE AS  
12 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
13 1, 2009]:

14 **Chapter 17. Art Dealers and Consignment of Art**

15 **Sec. 1. (a) Except as provided in subsection (b), this chapter**  
16 **applies to works of art delivered to an art dealer after June 30,**  
17 **2009.**

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(b) This chapter does not apply to a work of art that has a value less than fifty dollars (\$50).

Sec. 2. As used in this chapter, "art dealer" means a person engaged in the business of selling works of art. The term does not include a person exclusively engaged in the business of selling goods at public auction.

Sec. 3. As used in this chapter, "artist" means the creator of a work of art. If the creator of a work of art is deceased, the term includes the creator's heir, legatee, or personal representative.

Sec. 4. As used in this chapter, "bona fide purchaser" means a person who in good faith makes a purchase without notice of any outstanding rights of others.

Sec. 5. As used in this chapter, "claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, fixed, matured, disputed, secured, legal, or equitable. The term includes costs of collection and attorney's fees only to the extent that the laws of Indiana permit the holder of the claim to recover them in an action against the obligor.

Sec. 6. As used in this chapter, "commission" means the fee that an artist and an art dealer have agreed that the art dealer may retain after the sale of the artist's work of art to a third party. The term includes any form of compensation, including a percentage of the actual selling price of a work of art.

Sec. 7. As used in this chapter, "creditor" means a person who has a claim.

Sec. 8. As used in this chapter, "on consignment" means that no:

- (1) title to;
- (2) estate in; or
- (3) right to possession of;

a work of art superior to that of the consignor vests in the consignee, even if the consignee has the authority to transfer the consignor's right, title, and interest in the work of art to a third party.

Sec. 9. As used in this chapter, "work of art" means the following:

- (1) A visual rendition, including a painting, drawing, sculpture, mosaic, videotape, photograph, or digital image.
- (2) A work of calligraphy.
- (3) A work of graphic art, including an etching, a lithograph, a serigraph, or an offset print.
- (4) A craft work in material, including clay, textile, fiber, wood, metal, plastic, stone, gemstone, or glass.

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(5) A work in mixed media, including a collage, assemblage, or work consisting of any combination of works described in subdivisions (1) through (4).

**Sec. 10. (a)** This section supersedes any custom, practice, or usage of the trade.

**(b)** When an artist delivers a work of art of the artist's own creation to an art dealer for the purpose of:

- (1) sale;
- (2) exhibition; or
- (3) sale and exhibition;

for a commission, the delivery to and acceptance of the work of art by the art dealer places the work of art on consignment, unless the delivery is under an outright sale for which the artist receives full compensation for the work of art upon delivery.

**(c)** An art dealer described in subsection (b) is the agent of the artist with respect to a work of art described in subsection (b).

**(d)** A work of art described in subsection (b) is trust property and the art dealer is trustee for the benefit of the artist until the work of art is sold to a bona fide purchaser or returned to the artist.

**(e)** Except as provided in subsection (f), this subsection does not apply to a deposit placed by a customer on a work of art. The proceeds of the sale of a work of art described in subsection (b) are trust property. The art dealer is trustee for the benefit of the artist until the amount due the artist from the sale is paid in full. Unless the art dealer and the artist expressly agree otherwise in writing:

- (1) an art dealer shall pay the artist the proceeds of the sale of a work of art not later than thirty (30) days after the art dealer receives the payment; and
- (2) if the sale of the work of art is on installment, the art dealer shall first apply funds from an installment to pay any balance due to the artist on the sale.

The terms of an express written agreement that alters a provision set forth in subdivision (1) or (2) must be clear and conspicuous.

**(f)** If:

- (1) a customer who has placed a deposit on a work of art purchases the work of art; and
- (2) the customer's deposit is used in whole or in part to pay for the work of art;

the deposit shall be treated in accordance with subsection (e).

**(g)** Except as provided in subsection (h), if a work of art is lost or damaged while in the possession of an art dealer, the art dealer

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is strictly liable for the loss or damage in an amount equal to the value of the work of art. For purposes of this subsection, the value of a work of art is as follows:

(1) If a selling price for the work of art has been established in a written agreement between the artist and the art dealer, the value of the work of art is the selling price established in the agreement. An art dealer who reimburses an artist under this subdivision is not required to pay an amount that exceeds the amount that would have been due to the artist if the work of art had been sold in accordance with the agreement.

(2) If a selling price for the work of art has not been established in a written agreement between the artist and the art dealer, the value of the work of art is the fair market value of the work of art.

An art dealer who reimburses an artist as the result of loss of or damage to a work of art is not required to pay an amount that exceeds the amount that would have been due the artist if the work of art had been sold in accordance with the agreement.

(h) An art dealer is not liable for the loss of or damage to a work of art in the art dealer's possession if:

(1) the loss or damage occurs more than thirty (30) days after:

(A) the date by which the artist must remove the work of art, as specified in a written agreement between the artist and the art dealer; or

(B) the date on which the art dealer sends written notice to the artist by registered mail at the artist's last known address that the artist must remove the work of art, if a written agreement described in clause (A) does not exist; and

(2) the work of art was in the art dealer's possession at the time of the loss or damage because the artist failed to remove the work of art.

Sec. 11. (a) If a work of art is trust property under section 10 of this chapter when an art dealer initially receives it, the work of art remains trust property until the balance due the artist from the sale of the work of art is paid in full, even if the art dealer directly or indirectly purchases the work of art for the art dealer's own account.

(b) If an art dealer resells a work of art described in subsection (a) to a bona fide purchaser before the artist has been paid in full, the work of art ceases to be trust property and the proceeds of the resale are trust funds in the hands of the art dealer for the benefit

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of the artist to the extent necessary to pay any balance due the artist. The trusteeship of the proceeds continues until the fiduciary obligation of the art dealer with respect to the transaction is discharged in full.

**Sec. 12.** Trust property under section 10 or 11 of this chapter is not subject to a claim, lien, or security interest of a creditor of the art dealer.

**Sec. 13. (a)** An art dealer may accept a work of art for commission on consignment from an artist only if, not later than seven (7) days after accepting the work of art, the art dealer enters into a written contract with the artist that specifies the following:

- (1) The value of the work of art.
- (2) The time within which the proceeds from the sale must be paid to the artist if the work of art is sold.
- (3) The commission the art dealer is to receive if the work of art is sold.
- (4) The minimum price for the sale of the work of art.
- (5) Any discounts ordinarily given by the art dealer in the regular course of business.

**(b)** An art dealer who accepts a work of art for commission on consignment from an artist may:

- (1) use or display the work of art or a photograph of the work of art; or
- (2) permit the use or display of the work of art or a photograph of the work of art;

only if notice is given to a user or viewer that the work of art is the work of the artist.

**(c)** If an art dealer violates this section, the artist may bring an action in a court with jurisdiction to void the artist's contractual obligations to the art dealer. An art dealer who violates this section is liable to the artist in an amount equal to:

- (1) fifty dollars (\$50);
- (2) any actual, consequential, or incidental damages sustained by the artist because of the violation of this section; and
- (3) reasonable attorney's fees.

**Sec. 14. (a)** This section does not apply to an express written agreement under section 10(e) of this chapter altering a provision set forth in section 10(e)(1) or 10(e)(2) of this chapter.

**(b)** The provisions of this chapter may not be waived. Any part of an agreement that purports to waive a provision of this chapter is void.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Small Business and Economic Development, to which was referred House Bill 1271, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

VANDENBURGH, Chair

Committee Vote: yeas 12, nays 0.

## COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred House Bill No. 1271, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-2.5-6-17 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 17. (a) A retail merchant that is a consignee in a retail transaction shall collect and remit the state gross retail tax on the gross retail income received in a consignment sale.**

**(b) The retail merchant shall provide the consignor purchaser an invoice that shows that the state gross retail tax was paid to the retail merchant with a clear notation on the invoice that the item was a consignment sale by the retail merchant on behalf of (insert the name of the seller) to (insert the name of the purchaser)."**

Page 1, line 5, delete "This" and insert "**(a) Except as provided in subsection (b), this**".

Page 1, between lines 6 and 7, begin a new paragraph and insert:

**"(b) This chapter does not apply to a work of art that has a value less than fifty dollars (\$50)."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1271 as printed January 23, 2009.)

STEELE, Chairperson

Committee Vote: Yeas 9, Nays 1.

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